WHAT HAS TO CHANGE FOR FORESTS TO BE SAVED?

A HISTORICAL EXAMPLE FROM THE UNITED STATES

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INTRODUCTION

This article looks at the conservation of American forests in the nineteenth and twentieth centuries to cast light on the prospects for global forest conservation in the twenty-first. At the beginning of the nineteenth century, Americans understood their forests as good only for cutting. By the end of the century a national scheme existed for comprehensive and permanent forest conservation. This new scheme became possible thanks to changes in scientific knowledge, the ideological self-image of the country, political institutions, and the imagination and moral commitments of citizens and social movements. A look at the changes that laid the foundations of national forest conservation might help to show what would have to happen for international forest conservation to emerge. Alternatively, it might highlight differences between those past developments and present circumstances, showing how past is not prologue. In this case, the upshot is some of both.

I. EARLY AMERICAN IDEAS OF FORESTS

Forests are for cutting, or at least American forests were. When early Americans paused to justify their headlong rush across the continent, with its displacement and extermination of native populations, they tended to focus on this point: the world, as John Locke had pointed out, was made for the use of "the industrious and rational," not layabout Native Americans who indifferently

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squandered the natural wealth of the continent.[1] One of the rebellious colonists' major complaints against the King was that he had forbidden them to settle west of the Alleghenies, denying them the right to make North America flourish under the axe and plow.[2] Their key economic institution, private property, and their dawning political creed, the equality of all white men, coincided in the program of continental clearing and development: equality was real because everyone had the chance to open up a share of nature's wealth for himself and his family.[3] Thomas Jefferson promised that western lands would keep this cornucopia blooming for a thousand generations. It was not the last time a prominent American would go a little long on a boom.[4] William Blackstone, muse of the American common law, had observed that without private property, the world would have "continued [to be] a forest," meaning much less opportunity for ordinary men to make places for themselves.[5] The Supreme Court echoed this theme in 1823, when Chief Justice John Marshall, providing what he called "excuse, if not justification" for the United States' expropriation of Native American lands, observed that without the introduction of Anglo-American property rights, Europeans would have had to "leave the country a wilderness."[6]

These ideas were not just an affectation of judicial and presidential rhetoric. American political culture throughout most of the nineteenth century embraced the idea that cutting timber should be a right of citizenship, not just on private lands, but also on the federal land that we today call the public domain. After the Civil War, secretaries of the Interior Department intermittently tried to prosecute the freelance timber-harvesters who floated most of the forests of the Midwest down the Mississippi River or through the Great Lakes to Chicago, frequently under fraudulent land claims or in naked grabs. In 1878, Interior Secretary Carl Schurz, a veteran of Germany's liberal 1848 revolutions, anti-slavery activist, and former

1. *See* JOHN LOCKE, SECOND TREATISE ON CIVIL GOVERNMENT 22 (Prometheus Books 1986) (1690). On the influence of this view in early American legal and political thought, see JAMES TULLY, AN APPROACH TO POLITICAL PHILOSOPHY: LOCKE IN CONTEXTS 166-71 (1993).

2. *See* THE DECLARATION OF INDEPENDENCE para. 3 (1776) (referring to the King's "raising the conditions of new Appropriations of Lands" beyond the Alleghenies).

3. *See* AZIZ RANA, SETTLER EMPIRE AND THE PROMISE OF AMERICAN FREEDOM (forthcoming 2010) (manuscript at 16-17, on file with author).

4. *See* Thomas Jefferson, First Inaugural Address in Washington, D.C. (Mar. 4, 1801).

5. WILLIAM BLACKSTONE, 2 COMMENTARIES ON THE LAWS OF ENGLAND *7.

6. Johnson v. M'Intosh, 21 U.S. 543, 590 (1823).

senator from Missouri, invoked a broadly drafted 1831 statute restricting private cutting of certain trees on federal land (originally intended to ensure a supply of wood for building naval vessels) to stop unauthorized commercial timbering.[7] Besides genteelly delivered nativist slurs, many of Schurz's former senate colleagues accused him of instituting tyranny, violating the traditional prerogatives of settlers, and hamstringing western development.[8]

These arguments were woven together from several strands. Senators invoked the Declaration of Independence, which in its bill of particulars had complained of the 1763 prohibition on settlement west of the Alleghenies.[9] They argued that timbering was a traditional prerogative of settlers and that equitable treatment as between the settlers of Midwestern public lands and those of the West required maintaining the right.[10] They also claimed that settlers had earned the right to timber by embracing the risks and burdens of developing the West.[11] Finally, they argued that commercial-scale timbering was functionally necessary to develop the Western economy, lest the settlers be thrown back into primitive self-reliance without division and specialization of labor.[12] They denounced restrictions on timbering as "spoliation" and "robbery of the poor,"[13] as driving settlers into "barbarism,"[14] and as "depopula[ting]" the Western lands.[15]

To be sure, these arguments were partly a rhetorical shell game: the small settlers, whose rights the indignant senators invoked were not the real targets of Schurz's action. Those were large timber operations, often working through fraudulent homesteading claims,

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7. *See* PAUL GATES, HISTORY OF PUBLIC LAND LAW DEVELOPMENT 531-61 (1968).

8. 7 CONG. REC. 1719-23, 1861-69 (1878). On "slurs," see *id.* at 1721 (statement of Sen. Blaine) ("The Secretary of the Interior does not happen to be a native of this country.").

9. *Id.* at 1722 (statement of Sen. Blaine) ("I know of nothing to parallel it except that great assertion in our immortal Declaration of Independence that the King of England 'has erected a multitude of new offices, and sent hither swarms of officers to harass our people, and eat out their substance.'").

10. *Id.* (statement of Sen. Teller) ("I claim that nothing is demanded by the people in the Territories now that had not been conceded to all settles in the new Territories.").

11. *See id.* at 1721 (statement of Sen. Blaine) ("[I]t is a thing which has been conceded by the Government, that the hardy pioneer who goes forth and bears the flag of civilization onward against difficulties and dangers that appall stout hearts . . . shall have the air and the water and the wood.").

12. *See id.* at 1861 (statement of Sen. Blaine).

13. *Id.* at 1865 (statement of Sen. Eustis).

14. *Id.* at 1867 (statement of Sen. Sargent).

15. *Id.*

engaged in – depending how one saw the matter – plunder or pioneering development.[16] What is revealing, nonetheless, is the character of the arguments Schurz's antagonists felt compelled to make. These arguments, like those of the rebellious Atlantic seaboard colonists a century earlier, linked equal status in the political community with open access to frontier resources: to restrict settlers' access was to demote them to a sort of imperial vassalage, making them subject to orders from Washington and inferior to other, eastern Americans. The settlers' arguments also partook of the anti-monopoly, open-market impulses of Jacksonian and later Free Labor agendas, in which the freedom to participate in markets and, in particular, to sell one's own time and talent was essential to full standing in the polity.[17] The archetypal contrast for these arguments was between full social and political participation for all, which meant both markets and democracy, and monopolistic constraint protecting favored interests from scrutiny and competition. This view implied a particular conception of the public domain: as land held in trust for open use by, and prompt disbursement to, the citizens who had the only just claim to it. Federal retention of public lands was, in this view, a monopoly of an especially pernicious sort, because the lawmaker assigning the privilege was also its beneficiary.[18] There was no room for an idea of a public domain of forests as an enduring legal category subject to a distinct set of principles apart from the economic interests and prerogatives of individual citizens.[19]

II. SCIENCE, INTERESTS, AND IDEOLOGICAL REVOLUTIONS: THE PROGRESSIVES

The maligned Carl Schurz and his allies, who grew in number and importance through the later decades of the nineteenth century, were inspired by a new understanding of how the natural world worked. Gifford Pinchot, the visionary who did more than any other

16. *See* GATES, *supra* note 7, at 534-50.

17. *See* ERIC FONER, FREE SOIL, FREE LABOR, FREE MEN 11-18, 27-29 (1970) (setting forth these ideas).

18. *See* 7 CONG. REC. 1869 (1878) (statement of Sen. Teller) (questioning whether "there is any law . . . that authorizes the Secretary of the Interior to turn himself into a wood-peddler and to peddle out the timber from the public domain").

19. The narrow exception was that class of semi-public goods traditionally governed by the public trust doctrine. That the doctrine has in some instances become a principle of environmental management in the twentieth century is an ironic development. See DAVID C. SLADE, R. KERRY KEHOE & JANE K. STAHL, PUTTING THE PUBLIC TRUST DOCTRINE TO WORK (2d ed. 1997), for an introduction to this issue.

individual to create (and claim credit for) the national system of forest management was trained in the new forestry then underway in Germany. German foresters had come to understand the importance of managing a renewable resource for sustained yield over decades and centuries, and had developed techniques of planting, maintenance, and harvesting that were a world away from the rip-and-run practices of the American West. At a more basic, imaginative level, many of them were in the grip of a novel and nascent ecological idea: that the natural world was an interconnected system of systems, and that human action profoundly affected the balance and integrity of those systems.[20] This idea had come into American thought through the work of polymath diplomat George Perkins Marsh, whose path-breaking book, *Man and Nature*, influenced many among the small and beleaguered corps of civil servants who tried to stop unregulated cutting of public-domain forests.[21]

These ecological insights helped to legitimate the interests of resource users who wished to see the forests preserved because of what today's conservationists might call ecosystem services.[22] Marsh and other foresters emphasized that forests helped govern watersheds by preventing erosion and stabilizing the soil's absorption and release of water, which mitigated flooding and promoted relatively steady stream-flows through spring, summer, and fall, when rainfall might vary considerably among the seasons. Those who lived downstream and depended on flows from forested headwaters became important supporters of forest conservation. Irrigators and municipalities were particularly likely to speak out for upstream forests. Their experience of ecological interconnectedness as a motive for political action was among the earliest instances of a new approach to the natural world.

This recognition of scientific fact and corresponding economic interests soon became integral to a broader nineteenth-century contest over public ideas, in which forest preservation was again paradigmatic. The early- and middle-nineteenth century had seen glimmers of a more robust idea of the public domain: timber preservation for naval construction, sales of western lands to finance research and education in eastern states, and reservation of land for

20. *See* GATES, *supra* note 7, at 548-49 (discussing Marsh's influence).

21. GEORGE PERKINS MARSH, MAN AND NATURE (David Lowenthal ed., Univ. of Washington Press 2003) (1864).

22. *See generally* James Salzman, Barton H. Thompson, Jr. & Gretchen C. Daily, *Protecting Ecosystem Services: Science, Economics, and Policy*, 20 STAN. ENVTL. L. J. 309 (2001) (discussing ecosystem services).

public schools. Something resembling the contemporary idea, however, arose with, and contributed to, a larger rejection of the laissez-faire image of polity and political economy.

Today we associate this rejection of laissez-faire ideas, and the more ambitious conception of government's role in economic and social life, with the (broadly defined) Progressive Movement.[23] Early figures such as Schurz, followed by Theodore Roosevelt and his conservationist deputy, Gifford Pinchot, portrayed laissez-faire development, whether in labor markets or public-domain settlement, as a festival of exploitation. The nineteenth century, as they saw it, was burdened by thin ideas of freedom as unrestricted self-interest and community as a joint venture of economic convenience.[24]

The Progressives' motive arose from a social vision. Pinchot and Roosevelt were persuaded that narrow selfishness marred the laissez-faire view of society and sapped the energies of those who held it. They sought to inculcate a distinctly civic register of motivation, insisting that Americans owed more to one another and to future generations than they were in the habit of acknowledging, and that this debt should be a dignifying source of satisfaction, not an unwelcome burden.[25] This social vision bore at least three influences: the German political economists' image of society as an organic whole rather than a collection of atomized parts;[26] the humanitarian utilitarianism of Anglo-American reformers, who held that the well-being of all should be the aim of social policy;[27] and the impulse, signally in Roosevelt's "new nationalism," to motivate Americans by a vision of collective greatness.[28] These elements combined in Roosevelt's and Pinchot's picture of the public domain. In that picture, rational management of productive resources was both practically necessary to avoid waste and spoliation and normatively appropriate as an act of government on behalf of the whole

23. For introductions to these developments, see DANIEL T. RODGERS, ATLANTIC CROSSINGS: SOCIAL POLITICS IN A PROGRESSIVE AGE (1998) and RICHARD HOFSTADTER, THE AGE OF REFORM (1955).

24. *See generally* Theodore Roosevelt, *The New Nationalism*, Address given at Osawatomie, KS (Aug. 3, 1910), *in* THEODORE ROOSEVELT, THE NEW NATIONALISM 3 (1910) [hereinafter Roosevelt, *The New Nationalism*]; GIFFORD PINCHOT, THE FIGHT FOR CONSERVATION (1910).

25. *See generally* Roosevelt, *The New Nationalism*, *supra* note 24; PINCHOT, *supra* note 24.

26. *See* RODGERS, *supra* note 23, at 76-111.

27. *See* CHARLES TAYLOR, SOURCES OF THE SELF: THE MAKING OF THE MODERN IDENTITY 393-418 (1989) (discussing the foundations and tenets of Anglo-American humanitarian realism).

28. *See* Roosevelt, *The New Nationalism*, *supra* note 24.

community. Where the laissez-faire social vision located citizen dignity in the ideal of equal social and economic status, the Progressive image found citizen dignity in belonging to a polity that acknowledged and competently executed its duties to the community and in aligning oneself personally with an idea of the common good rather than self-interest alone.[29] As we shall see, this idea of a distinct domain of public ownership and management on behalf of the whole polity also helped to legitimate a new conception of national parks as monumental emblems of national splendor.

Separating the empirical and normative aspects of the Progressive vision is somewhat artificial, for the two were mutually reinforcing. An account of individuals as complicatedly interconnected parts of an organic whole drew empirical attention to the concrete character of those interconnections, in areas ranging from statistics and public health to forest management. It also lent normative weight to issues as diverse as national sentiment, which connected individuals with a shared project and idea of common good, and welfare-enhancing expert management of shared resources, which shaped the context of interdependent activity and, ideally, promoted the interest of the whole community. If shared identity and institutional context were indispensable to description, after all, then reformers had to engage them in criticizing and improving the country.

Consider Theodore Roosevelt's "new nationalism." Roosevelt shared a worry with figures such as Oliver Wendell Holmes and William James: that the achievements of modern life – security and prosperity – would erode certain human characteristics that (1) made such achievements possible in the first place and (2) comprised qualitatively superior values, prominent among them initiative, heroism, self-sacrifice, and a taste for danger and adventure.[30] They warned against a society of petty self-seeking and lassitude, in which, Roosevelt foretold, the American nation would "rot by inches," like China.[31] Roosevelt also had a horror of social conflict, particularly between economic classes, which he portrayed as another symptom of

29. *See id.*; William James, *The Moral Equivalent of War*, *in* MCCLURE'S MAG., May-Oct. 1910, at 493.

30. *See* Roosevelt, *The New Nationalism*, *supra* note 24; Roosevelt, *The Strenuous Life*, Speech Delivered Before the Hamilton Club in Chicago, Ill. (Apr. 10, 1899), *in* THEODORE ROOSEVELT, THE STRENUOUS LIFE: ESSAYS AND ADDRESSES 1 (1902) [hereinafter Roosevelt, *The Strenuous Life*]; James, *supra* note 29; Oliver Wendell Holmes, Jr., Commencement Address at Harvard University: A Soldier's Faith (May 30, 1895).

31. *See* Roosevelt, *The Strenuous Life*, *supra* note 30, at 6.

the same failure of social virtue: narrow self-seeking and mere materialism aggregated into class interests.[32] He warned that if such conflict prevailed, "tyranny and anarchy were sure to alternate" as the condition of the collapsed republic.[33]

Several mutually reinforcing approaches to creating these salutary qualities defined Roosevelt's political ideas during the time of his greatest prominence, between the end of the nineteenth century and the beginning of World War I. One was to promote common cynosures of the national imagination, shared projects and ideas that would make American identity more important than sectional, class, or religious alternatives. This approach was at the heart of his "new nationalism," and its civically sacred objects included war,[34] and an ostensibly liberalizing imperialism.[35] A second approach was to create conditions in which Americans could mingle and share projects across class and other divisions to develop the "fellow-feeling" that Roosevelt praised.[36] A third approach was to encourage vigorous character that would embrace all manner of challenge and difficult projects and overcome the imaginative sluggishness and narrowness that Roosevelt thought he saw at the base of both enervation and conflict. This last aim, the center of the

32. *See* Theodore Roosevelt, *Fellow-Feeling as a Political Factor*, CENTURY (Jan. 1900) *reprinted in* THEODORE ROOSEVELT, THE STRENUOUS LIFE: ESSAYS AND ADDRESSES 65, 74-75 (1902) [hereinafter Roosevelt, *Fellow-Feeling*] ("[M]en are pitted against one another in accordance with the blind and selfish interests of the moment. Each is thus placed over against his neighbor in an attitude of greedy class hostility, which becomes the mainspring of his conduct, instead of each basing his political action upon . . . his own disinterested sense of devotion to the interests of the whole community as he sees them.").

33. *Id.* at 75.

34. *Id.* at 66 ("The war with Spain was the most absolutely righteous foreign war in which any nation has engaged during the nineteenth century, and not the least of its many good features was the unity it brought about between the sons of the men who wore the blue and of those who wore the gray.").

35. Roosevelt praised "the mighty lift that thrills 'stern men with empires in their brains'" and scorned those who "shrink from seeing us do our fair share of the world's work, by bringing order out of chaos in the great, fair tropic islands from which the valor of our soldiers and sailors has driven the Spanish flag." Roosevelt, *The Strenuous Life*, *supra* note 30, at 7.

36. Roosevelt, *Fellow-Feeling*, *supra* note 32, at 79-81 ("The only way to avoid the growth of these evils is, so far as may be, to help in the creation of conditions which will permit mutual understanding and fellow-feeling between the members of the different classes. . . . [I]f the men can be mixed together in some way that will loosen the class or caste bonds and put each on his merits as in individual man, there is certain to be a regrouping independent of caste lines."). Even more important, "men who work together for the achievement of a common result in which they are intensely interested are very soon certain to disregard, and, indeed, to forget, the creed or race origin or antecedent social standing or class occupation of the man who is either their friend or their foe. They get down to the naked bed-rock of character and capacity." *Id.* at 81.

famous speech on the "Strenuous Life," ranged from the rallying national projects just described to raising children (always "boys" for Roosevelt) into physically vital and brave and emotionally high-spirited citizens.[37]

A Progressive policy for managing lands in the public domain figured in all three strategies. First, public management of federal lands in the national interest, in contrast to the interests of the extractive industries, was a visible object of commonality that transcended faction. Roosevelt struggled mightily to portray regulation of the private economy as perfectly reconciling the interests of labor and capital in a higher public interest, but the severe and persistent problems of that project did not – at least not self-evidently – attend management of the public lands. In declaring that "natural resources must be used for the benefit of all our people, and not monopolized for the benefit of the few," Roosevelt could also say that "Conservation is a great moral issue for it involves the patriotic duty of ensuring the safety and continuance of the nation," and even that "national efficiency," the ideal of reconciling all economic interests in a regime of fair opportunity and fair reward, "is a necessary result of the principle of conservation widely applied."[38] Conservation was exemplar, even synecdoche, for the ideal of a transcendent public interest pursued by national power.

Second, forest reserves and parks created civic commons in which Americans could escape the class segregation that Roosevelt feared especially pervasive in urban and industrial America:[39] they provided "free camping-grounds for the ever-increasing numbers of men and women who have learned to find rest, health, and recreation

37. Roosevelt, *The Strenuous Life*, *supra* note 30, at 2 ("If you are rich and are worth your salt, you will teach your sons that though they may have leisure, it is not to be spent in idleness . . . ."); Theodore Roosevelt, *What We Can Expect of the American Boy*, ST. NICHOLAS, May 1900, at 571 [hereinafter Roosevelt, *American Boy*] ("Of course what we have a right to expect of the American boy is that he shall turn out to be a good American man. . . . He must not be a coward or a weakling, a shirk or a prig. He must work hard and play hard. He must be clean-minded and clean-lived, and able to hold his own under all circumstances and against all comers. It is only on these conditions that he will grow into the kind of American man of whom America can be really proud.").

38. Roosevelt, *The New Nationalism*, *supra* note 24, at 26.

39. In "the larger cities . . . the conditions of life are so complicated that there has been an extreme differentiation and specialization in every species of occupation, whether of business or pleasure. The people of a certain degree of wealth and of a certain occupation may never come into any real contact with the people of another occupation, of another social standing. . . . This produces the thoroughly unhealthy belief that it is for the interest of one class as against another to have its class representatives dominant in public life." Roosevelt, *Fellow-Feeling*, *supra* note 32, at 78.

in the splendid forests and flower-clad meadows of our mountains[,] . . . set apart forever for the use and benefit of our people as a whole and not sacrificed to the short-sighted greed of a few."[40] Third, open lands were the ideal training-ground for the masculine virtues Roosevelt set against the lassitude of industrial democracy. He had remade himself as an adult to his own satisfaction by adventuring and ranching in the Dakotas, and he saw the greatest prospect for "a good American man" in "boys who live under such fortunate conditions that they have to do either a good deal of outdoor work or a good deal of what might be called natural outdoor play."[41] For him, the best assurance that the strenuous life would remain available and attractive was to keep open lands where all Americans could test themselves against the elements.

Roosevelt and his allies, then, were doing several interconnected tasks at once. They were creating national forest reserves, in new recognition of the protected forests' scientific significance and bearing on the interests of Western settlers other than timber-cutters. They were also inventing an idea of the nation suited to maintaining national forests in perpetuity: one in which the national government legitimately, indeed necessarily, took on responsibility for promoting the common good with a combination of far-sighted vision and scientific expertise, particularly as to large and complex resources such as forests. Moreover, they were helping to recast the idea of the American public in a way that made intelligible, even natural, a permanent public domain that not long earlier had seemed all but unthinkable. This understanding meant redefining the civic identity of Americans by connecting their sense of dignity and pride not just to equal formal opportunity in a laissez-faire polity, but also to emblems of national greatness, which included public lands. Even the lower-built, utilitarian rationale for forest conservation was not an appeal to selfishness. Instead, it explicitly required that individual Americans, in abiding by harvest restrictions and other conservation measures, take into account the interests of their contemporaries and future generations. As Roosevelt and Pinchot recognized, the utilitarian case for conservation worked only in conjunction with a considerable extension of moral and civic imagination, a generous "nationalism" that saw unborn women and men as having claims on living individuals for the preservation of a shared world.

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40. 15 THEODORE ROOSEVELT, *First Annual Message* (1901), *in* THE WORKS OF THEODORE ROOSEVELT 81, 104 (Hermann Hegedorn ed., 1926).

41. Roosevelt, *American Boy*, *supra* note 37, at 572.

III. THE ROMANTIC MOTIVE AND THE AMERICAN IMAGINATION

Most Americans today who identify as environmentalists have somewhat different motives from those just surveyed. Though not all would put it in just this way, we who identify in this way love nature and believe it matters not just in what it does for us, but also in itself. This too was in important ways a new idea.

Alexis de Tocqueville in 1831 bewildered a Michigan frontiersman by expressing a wish to see the primeval American forest, not for timber or land speculation, but for aesthetic contemplation.[42] Tocqueville's frontiersman was probably typical in his incomprehension: while an absence is famously difficult to prove, here is one instance. The journals of mountain man Jedediah Smith, recording extraordinary journeys across the continent in the decade before Tocqueville's visit, are rich with evidence of curiosity piqued by everything from the manners of British commanders in Oregon to the religious observances of Spanish California, as well as a great deal of humane sympathy for Native Americans (some of whom would slay Smith a few years later). Yet they lack a single expression of awe, even aesthetic admiration, in answer to the landscapes Smith crossed.[43]

Although Tocqueville's indifferent guide was too early to have read Ralph Waldo Emerson's "Nature" or Henry David Thoreau's *Walden*, his America was remote from that of William Bradford, governor of the Plymouth colony in many of its earliest years, who described the new land as "a hideous and desolate wilderness" of "wild and savage hue."[44] Already William Cullen Bryant had promised "To him who in the love of Nature holds/Communion with her visible forms, she speaks/A various language[.]"[45] Bryant's poetry, in which he later declared, "The groves were God's first temples,"

42. *See* ALEXIS DE TOCQUEVILLE, *A Fortnight in the Wilds*, *in* JOURNEY TO AMERICA 328, 335 (J.P. Mayer ed., George Lawrence trans., Yale Univ. Press 1960) (1860).

43. *See generally* Jedediah S. Smith, *The Journal of Jedediah Strong Smith*, *in* THE SOUTHWEST EXPEDITION OF JEDEDIAH S. SMITH 35 (George R. Brooks ed., 1977) (assembling Smith's Journals from his first expedition, 1826-27); Jedediah S. Smith, Journals, *in* MAURICE S. SULLIVAN, THE TRAVELS OF JEDEDIAH SMITH (1934) (assembling Smith's Journals from his second expedition, 1827-28).

44. *See* WILLIAM BRADFORD, *A Hideous and Desolate Wilderness*, *in* JOURNAL (1620-35), *reprinted in* ENVIRONMENT: AN INTERDISCIPLINARY ANTHOLOGY 282, 283 (Glenn Adelson et al. eds., Yale Univ. Press 2008) (1856).

45. WILLIAM CULLEN BRYANT, *Thanatopsis*, *in* THE POETICAL WORKS OF WILLIAM CULLEN BRYANT 21, 21 (D. Appleton & Co. Roslyn ed., 1929) (1821).

contributed mightily in later decades to the project of American literary nationalism.[46]

John Muir, writer and first president of the Sierra Club, was the single individual most responsible for promoting this idea as part of American public culture. Muir was not an innovator in ideas or expression. His writing is inconsistent on the relations among theism, pantheism, and paganism; between humanism and the bio-centric "inhumanism" of such later figures as the California poet Robinson Jeffers;[47] and between the utilitarianism of reformers such as Carl Schurz and Gifford Pinchot and an alternative that would place a superior value on nature's aesthetic, spiritual, or intrinsic value.[48] It may have been because of his vagueness, rather than despite it, that Muir became founding symbol and muse of the first generation of American environmental politics. Muir's writing amounted to a pastiche of landscape description and travel narrative, with episodic flights of soaring prose describing his intense delight and sense of revelation in the face of nature's beauty. These passages might have lacked a theological or metaphysical structure, but they consistently conveyed certain ideas. Everyday life was spent in instrumental activity, spilled out in drab settings, which blunted the eyes and the mind. In the most spectacular natural settings, particularly those that an earlier generation of aesthetic theorists would have called sublime – mountain peaks, endless vistas, sheer rock, glacial faces – something entirely different broke through in the mind (though, as Yeats wrote of love, it came in at the eye).[49] It had, as Muir described it, none of the terror that earlier aesthetic theorists had associated with the sublime, but its other sensations were aligned with those: awe, rapture, ecstasy, and wonder.[50] This aesthetic and emotional torrent had moral import: it revealed the world and mind as good, benign, characterized by harmonies in which even death (though mostly

46. WILLIAM CULLEN BRYANT, *A Forest Hymn*, *in* THE POETICAL WORKS OF WILLIAM CULLEN BRYANT 79, 79 (D. Appleton & Co. Roslyn ed., 1929) (1832).

47. *See generally* ROBINSON JEFFERS, *Hurt Hawks*, *in* THE SELECTED POETRY OF ROBINSON JEFFERS 165, 165-66 (Tim Hunt ed., Stanford Univ. Press 2001) (1926) (example of Jeffers work).

48. *See* JOHN MUIR, OUR NATIONAL PARKS 19-21 (1901) (referring to animals as "animal people" to emphasize their equal moral standing with humans). *But see id.* at 361-62 (accepting the near-extermination of the American bison as progress).

49. *See* WILLIAM BUTLER YEATS, *A Drinking Song*, *in* THE COLLECTED POEMS OF W.B. YEATS 92, 92 (Macmillan Co. Definitive ed., 1960) (1910).

50. *See* EDMUND BURKE, A PHILOSOPHICAL INQUIRY INTO THE ORIGIN OF OUR IDEAS OF THE SUBLIME AND BEAUTIFUL 57-87 (James T. Boulton ed., Univ. of Notre Dame Press 1958) (1757).

invisible) played a role, and mortally threatening events such as storms and earthquakes were only reminders of nature's vitality.[51] Nature's vitality and harmony were properly those of the mind as well, but quotidian affairs drew it constantly from them. The surest source of renewal and reconnection was in encounter with nature.[52] A properly harmonious mind, Muir tended to say, would incline toward fraternity with all women and men and, indeed, with all species and of nature.[53]

Muir's writing might be fairly described as a manual for experience of a certain type. Muir's writing enacted a journey on foot over extreme and spectacular landscape; a precise, appreciative, even reverent way of seeing that landscape as one moved across it; and a register of overwhelming yet exquisite emotional response, with a benign moral interpretation already latent in it. To read Muir was to learn to make his experience your own. He was as much a guide for his ordinary reader as for soon-to-be President Roosevelt, whom he accompanied on a two-man camping trip in the high Sierra.[54]

This was very much the view of Muir's accomplishment among his admirers, many in the Sierra Club, whose presidency he held for 22 years after its founding in 1892. William Frederic Bade, a scholar of Near-Eastern religion and archeologist at Berkeley, wrote a typical passage in a memorial issue of the *Sierra Club Bulletin* after Muir's death in 1915: Placing Muir among "prophets and interpreters of nature," he forecast: "Thousands and thousands, hereafter, who go to the mountains, streams, and cañons of California will choose to see them through the eyes of John Muir, and they will see more deeply because they see with his eyes."[55] James Bryce, an English Liberal politician and Regius Professor at Oxford, in a brief frontispiece and death announcement, praised Muir as "one who had not only a passion for the splendours [sic] of Nature, but a wonderful power of

51. *See* DONALD WORSTER, A PASSION FOR NATURE: THE LIFE OF JOHN MUIR 373 (2008) (describing Muir as "both glad and frightened" upon the occurrence of an earthquake in Yosemite Valley in 1872 because "even a terrifying catastrophe could 'enrich' the landscape with beautiful new taluses and rock faces").

52. *See id.* at 372 (summarizing Muir's view that "[t]he western parks and reserves offered healing to a nation cursed by too much work").

53. *See id.* at 373 (explaining Muir's perspective that "leaning how nature . . . generates a unified complexity is good tonic for the troubled, careworn human mind," a notion that compelled Muir to lead expeditions of visitors at Yosemite for the purpose of "identifying species [and] explaining their ecological connectedness").

54. *See id.* at 366-68.

55. William Frederic Bade, *To Higher Sierras*, 10 SIERRA CLUB BULL. 38, 40 (1916).

interpreting her to men."[56] Even Muir's honorary doctorate of laws from the University of California picked him out as a "friend and protector of nature, uniquely gifted to interpret unto other men her mind and ways."[57] The premise of nature's mindedness, even as a rhetorical flourish, shows the pervasiveness among Muir's admirers of the broadly Transcendentalist and pantheistic attitudes that he frequently displayed. A year later, commenting on the posthumous appearance of a book drawn from early journals, the *New York Times* reflected, "many who have sought a vision of truth beneath the surface of nature have found it through the eyes of John Muir."[58]

From its earliest issues, the Sierra Club's *Bulletin* served as a public space in which members could give voice to the sentiments that Muir put down and create a limited public culture of aesthetic and spiritual resonance with nature. Mark Brickell Kerr, a pioneering alpinist, contributed an account of Crater Lake, Oregon, quoting the naturalist W.G. Steel: "Here all the ingenuity of Nature seems to have been exerted . . . to build one grand, awe-inspiring temple, within which to live and gaze upon the surrounding world and say, The universe is my kingdom and this is my throne."[59] Even more typical and revealing than this Muir-like pantheistic flourish are the many accounts of journeys to the high Sierra that echo Muir's style and themes quite unselfconsciously. An account of an ascent of Mt. Lyell describes "[h]ours pass[ing] like moments" in "this sacred spot."[60] A group of college friends, divided by ideological conflict (one is a sort of socialist, another, the author, is a conservative Congressional representative) find in the high Sierra that "[t]he varnish of civilization was rubbed off, and the true strata of individual organism developed. . . . [We] learned to interpret and love the 'various language' in which nature speaks to the children of men. . . . We were acolytes in the grand temple of the eternal."[61] Another reporter – as it happened, no tourist but a very serious mountaineer – emerged from a life-threatening snowstorm into sunlight reflecting, "to be confronted with a sight that touches to the quick the aesthetic nature,

56. James Bryce, *A Message and Appreciation*, 10 SIERRA CLUB BULL. 1, 1 (1916).

57. Benjamin Ide Wheeler, *John Muir, Doctor of Laws, University of California*, 10 SIERRA CLUB BULL. 24 (1916).

58. Notable Books in Brief Review, *John Muir's Account of His Historic Thousand-Mile Walk to the Gulf and Other Recent Publications*, N.Y. TIMES, Jan. 21, 1917, at BR4.

59. Mark Brickell Kerr, *Crater Lake, Oregon, and the Origin of Wizard Island*, 1 SIERRA CLUB BULL. 31, 38-39 (1893).

60. Helen M. Gompertz, *A Tramp to Mt. Lyell*, 1 SIERRA CLUB BULL. 136, 141 (1894).

61. John R. Glascock, *A California Outing*, 1 SIERRA CLUB BULL. 147, 161 (1895).

and thrills the immaterial soul within as it had never thrilled before — what a lesson in the duality of man!"[62] Marion Randall, an early and longtime member of the Club, wrote in 1905 that its expeditions restored its members for ordinary life by reconnecting them with morally educative beauty:

> For a little while [on an outing] you have dwelt close to the heart of things. . . . [L]ived daylong amid the majesty of snowy ranges, and in the whispering silences of the forest you have thought to hear the voice of Him who 'flies upon the wings of the wind.' And these things live with you . . . back in the working world . . . even until the growing year once more brings around the vacation days, and you are ready to turn to the hills again, whence comes, not only your help, but your strength, your inspiration . . . .[63]

Although less relentless than Muir himself in their aestheticized spirituality, the Sierra Club's correspondents developed and reinforced a language within their movement in which expressions of that spirituality were ordinary features of the journey into extraordinary landscapes. They were, to be sure, lessons for visitors, not saints: such pieces frequently ended with wry and wistful acknowledgements of the transient recreational character of the encounter with nature's revelatory sublimity, noting the inevitable return to the settled world.[64] When written by more serious explorers, they were also practical how-to guides, with detailed descriptions of routes, seasons, and appropriate gear. Taking Muir as their starting point, a movement was inaugurating a way of experiencing the natural world and a (for them, at least) morally authoritative way of expressing that experience, which both confirmed its reality and taught others how to feel it for themselves.

IV. AMERICAN ROMANTICISM AND FOREST PRESERVATION

Guided by the experiences and attitudes just described, the Sierra Club's members found in the same sentiments a basis for supporting forest preservation, which interacted with and bolstered the Progressive rationales. Like Teddy Roosevelt's Progressives, Sierra Club devotees objected to the self-serving "materialism" at large in American life. They were strong supporters of reserving

62. Theodore S. Solomons, *A Search for a High Mountain Route from the Yosemite to the King's River Cañon*, 1 SIERRA CLUB BULL. 221, 236 (1895).

63. Marion Randall, *Some Aspects of a Sierra Club Outing*, 5 SIERRA CLUB BULL. 221, 227-28 (1905).

64. *See id.*

national forests, for usefulness to be sure, but also in keeping with the higher form of consciousness they sought. In his memorial for Muir, William Colby, a lawyer and first secretary of the Club, warned that "Muir will never be fully appreciated by those whose minds are filled with money getting and the sordid things of modern every-day life" and lamented the indifference of "those . . . engaged in making everything within reach 'dollarable[.]'"[65] Robert W. Underwood Johnson, editor of the Progressive *Century* magazine, opened his memorial to Muir by predicting, "Sometime, in the evolution of America, we shall throw off the two shackles that retard our progress as an artistic nation – philistinism and commercialism – and advance with freedom toward the love of beauty as a principle," and forecast that Muir would be recognized as a prophet of that transformation.[66]

The registers of high-minded moral dissent and programmatic reformism merged in the development of the Club's conservation politics as early as 1895, when the Club first gathered to discuss taking a stand on the path-breaking conservationist issue of creating permanent national forests in the federal public domain. Joseph le Conte – Sierra explorer, Berkeley professor of engineering, and scion of a prominent family from the South – opened the discussion with an attack on "individualism . . . run mad."[67] This doctrine, which he identified as the dominant one "in modern times" he identified with the reduction of all social endeavor to selfishness, "the maxim, that society and the government are made for the greatest good of the greatest number. True; but the greatest number is Number One!"[68] This slightly tortuous logical slide from utilitarianism to egoism expresses the ambivalence many Progressives, including early conservationists, felt about the utilitarian account of social life. On one hand, they did not call it false: its axioms, that human interest was the compass of public policy and that each person must count alike, were the cornerstones of principled reformism and bulwarks against both traditional aristocracy and corrupt democracy. On the other, they suspected that without some higher civic or spiritual motive, placing human interests at the center of the moral calculus would, in

65. William E. Colby, *John Muir –President of the Sierra Club*, 10 SIERRA CLUB BULL. 2, 2-3 (1916).

66. Robert Underwood Johnson, *John Muir as I Knew Him*, 10 SIERRA CLUB BULL. 9, 9 (1916).

67. Report, *Proceedings of the Meeting of the Sierra Club: November 23, 1895*, 1 SIERRA CLUB BULL. 268, 270 (1895).

68. *Id.*

fact, invite the reign of unchecked selfishness. Le Conte made the Progressive equation between personal refinement and rational public policy, arguing, "If we compare the cultured man with the uncultured man . . . the most striking difference [is that] the uncultured man is trying to live for the interests of the 'now,' but the cultured man – and in proportion as he is cultured – looks to the future as well as to the present."[69] Le Conte identified this "cultured" outlook with recognition that individuals are part of a "social organism" that ties persons together across space and time.[70] It was on the basis of this account that he concluded, "nothing can save our timber land except complete reservation by the Government. Every particle of it that is yet left should be reserved . . . and used in a thoroughly rational way for legitimate uses only . . . removing only such as can be steadily replaced by fresh growth."[71] The path to utilitarian rationality ran through the moral and aesthetic renovation that the Club's members sought among themselves and throughout society.

CONCLUSION: PARALLELS AND PROSPECTS

For much of the nineteenth century, the forests of the United States were either on their way to privatization or, effectively, open-access commons for timber-cutters. A series of innovations changed this situation dramatically, making national forests the paradigm case of national conservation of natural resources. This Part considers those innovations alongside the issue of this symposium: the prospects for conserving global forest resources.

In some ways, the most straightforward change was growing scientific and economic insight. Advances in forestry showed that deforestation had consequences well beyond the acres where the cutting happened, imposing costs on others who had no say in the timbering decision. There is an unmistakable parallel to the climate-change threat that motivates today's calls for forest conservation: the same sentence describes both problems. (It is important, though, not to imagine science as an entirely autonomous source of knowledge: in fact, both its internal development and its political are connected with broader cultural facts. George Perkins Marsh's ecological insights were not just empirically based, but emerged from his

69. *Id.*
70. *Id.*
71. *Id.*

Transcendentalism, his belief that the mind could draw meaningful patterns from nature. The recent political currency of climate change has a fair amount to do with science, but also a fair amount to do with changing media coverage.)[72] What is less clear is whether global forest preservation can produce a focused and effective constituency of the kind that downstream irrigators and municipalities were able to form for American timber conservation or whether the diffuseness and uncertainty of climate change will make it difficult, here as elsewhere, for that issue to become any group's first priority.[73] Proposals to fund forest conservation through international contributions are supposed to address just this problem, of course, creating a constituency by paying for it. The problem is that this is bootstrapping: for money to substitute for unsubsidized economic interests or other sources of political will, those latter sources of pressure must first exist, at least enough to convince governments to fund subsidies for forest conservation. But what are the motives for that latter political pressure? At the time of writing, in late January of 2009, the world's wealthy governments are not exactly lacking for demands on their resources.

American forest conservation contributed to, and was enabled by, a redefinition of the scope and role of national government. The Progressive conception of national government was more *national* than what had come before, charged with more tasks that spanned the continent to match the scale of a growing and increasingly complex economy.[74] It was also more managerial: while government had always created infrastructure and disbursed public lands, it was now to be more pervasively involved in shaping the ongoing economic life of the country, ideally to ensure a measure of fairness, security, and equal opportunity.[75] It was, moreover, connected with a strong idea of civic spirit, the belief that citizens should be – and could be – motivated by an idea of the common good that included, and

72. *See* George Perkins Marsh, Human Knowledge: A Discourse Delivered Before the Massachusetts Alpha of the Phi Beta Kappa Society at Cambridge (Aug. 26, 1947), *in* LIFE AND LETTERS OF GEORGE PERKINS MARSH 431, 431-52 (Caroline Crane Marsh ed., N.Y., Charles Scribner's Sons 1888).

73. For a survey of these issues, see Jedediah Purdy, *Climate Change and the Limits of the Possible*, 18 DUKE ENVTL. L. & POL'Y F. 289, 291-95 (2008).

74. *See* RODGERS, *supra* note 23, at 56; *see generally* Hofstadter, *supra* note 23 (background on American Progressivism).

75. *See generally* RODGERS, *supra* note 23; THOMAS K. MCCRAW, PROPHETS OF REGULATION (1984).

elevated, the practical tasks that Progressives set for government.[76] Such a government was the kind of entity that could take on a perpetual, complex managerial role in overseeing national forests. The decision to take on that role, in turn, helped make the new ideal of government into reality.

It is harder to see a parallel today, since the last eight years have not been fruitful for global governance, either institutionally or culturally. But these things can change fast. Effective institutions are much more likely to arise to answer a concrete institutional task than from an abstract wish for effective institutions. An idea of global-scale political community or political action seems distinctly possible today, although it remains very much a matter of potential. The worldwide protests that preceded that United States invasion of Iraq in 2003 and the world's (mostly) rapturous response to the election of Barack Obama as American President are both reminders that a networked world can produce parallel action everywhere, all at once, if people are so moved. The climate threat that motivates forest-preservation efforts is, of course, a candidate to spur just this sort of action. It is conceivable that some juncture in the post-Kyoto process could become the focal point of just such action. Without this kind of pressure, drift and foot-dragging seem likely to limit the prospects for global forestry conservation.

What about the Romantic cultural innovations of the Sierra Club and its founder, John Muir? That change, too, provided a basis of political support for national forests and, more diffusely, a way for Americans to understand conservation as a worthwhile commitment. In this view, forests were not just preserves of practical, economic values, or even training grounds for civic virtue, but also repositories of aesthetic and spiritual values that, without preserved lands, could disappear altogether. This moral image of the natural world has direct relevance for the politics of conservation.

Is there such an image for global forest conservation? This seems an open question, one likely to be important not just for this issue, but for addressing climate change and other trans-national environmental problems. Only since the 1970s – a generation and a half, maybe just barely two generations of environmentalism – has American environmental politics included the famous Earth Photograph in its iconography, and the planet, rather than some spectacular or polluted place on it, has become a moral touchstone. It

76. *See* Roosevelt, *The New Nationalism*, *supra* note 24.

seems fair to say that today there is not a way of expressing the meaning of living on a viable and beautiful planet, in contrast to the fairly rich vocabularies that describe the experience of sublime landscapes, wilderness, and more integrated pastoral beauty – or our dysphoric languages of spoliation and pollution. The language we need has yet to arrive. Maybe the search for global forest conservation will be one of its sources.